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May 12, 2020

The Honorable Mike Crapo
Chairman
The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Maxine Waters
Chairwoman
The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Department of the Treasury: Small Business Administration Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Criterion for Seasonal Employers*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury (Treasury) entitled “Small Business Administration Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Criterion for Seasonal Employers” (RIN: 1505-AC67). We received the rule on April 30, 2020. It was published in the *Federal Register* as an interim final rule on April 30, 2020. 85 Fed. Reg. 23917. The effective date of the rule is April 30, 2020.

According to Treasury, this interim final rule authorizes all lenders eligible to originate loans under the Payment Protection Program (PPP), administered by the Small Business Administration, to use an alternative criterion for calculating the maximum loan amount for PPP loans issued to seasonal employers. Treasury states that, without the ability to use an alternative base period, many summer seasonal businesses would be unable to obtain funding on terms commensurate with those available to winter and spring seasonal businesses. According to Treasury, this interim final rule addresses that disparity and ensures consistency in program administration by providing a seasonal employer the option of using any consecutive 12-week period between May 1, 2019, and September 15, 2019, for determining its maximum loan amount.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. §§ 553(b)(3)(B), 808(2). Here, although Treasury did not

specifically mention CRA's 60-day delay in effective date requirement, the agency found good cause to waive notice and comment procedures and incorporated a brief statement of reasons. According to Treasury, it finds that prior notice and comment are impracticable and contrary to the public interest and that good cause exists to issue the interim final rule immediately. Specifically, Treasury states that the ongoing unprecedented situation related to the Coronavirus Disease 2019 (COVID-19) is having a nationwide impact, as demonstrated by the declaration of a national emergency by the President. See *Proclamation 9994 of March 13, 2020*, 85 Fed. Reg. 15337 (Mar.18, 2020). According to Treasury, the rule supports seasonal employers affected by COVID-19 in obtaining PPP loans to maintain their businesses and keep people employed. Treasury concludes that to protect the public interests during the ongoing national emergency, there is good cause to dispense with prior public notice and the opportunity to comment on this rule before issuing the rule, and there is good cause to make the rule effective immediately.

Enclosed is our assessment of Treasury's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Heidi Cohen
Senior Legal Advisor for Regulatory Affairs
Department of the Treasury

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY
ENTITLED
“SMALL BUSINESS ADMINISTRATION BUSINESS LOAN PROGRAM
TEMPORARY CHANGES; PAYCHECK PROTECTION
PROGRAM—ADDITIONAL CRITERION FOR SEASONAL EMPLOYERS”
(RIN: 1505-AC67)

(i) Cost-benefit analysis

In its submission to us, the Department of the Treasury (Treasury) indicated that it considered preparation of an analysis of the costs and benefits of this interim final rule concerning the Payment Protection Program (PPP) to be not applicable.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

The interim final rule did not discuss RFA. In its submission to us, the agency indicated it considered the requirements to certify whether the rule would not have a significant economic impact on a substantial number of small entities under 5 U.S.C. § 605(b) and to prepare a final Regulatory Flexibility Analysis under 5 U.S.C. § 604(a) to be not applicable.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The interim final rule did not discuss UMRA. In its submission to us, Treasury indicated that it considered preparation of a written statement under section 202 of the Unfunded Mandates Reform Act of 1995 to be not applicable.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

Treasury issued this interim final rule without prior notice and opportunity to comment and with an immediate effective date. Treasury found that prior notice and comment were impracticable and contrary to the public interest and that good cause exists to issue the interim final rule immediately. Specifically, Treasury states that the ongoing unprecedented situation related to Coronavirus Disease 2019 (COVID–19) is having a nationwide impact, as demonstrated by the declaration of a national emergency by the President. *See Proclamation 9994 of March 13, 2020*, 85 Fed. Reg. 15337 (Mar. 18, 2020). According to Treasury, the rule supports seasonal employers affected by COVID–19 in obtaining PPP loans to maintain their businesses and keep people employed. Treasury concludes, pursuant to 5 U.S.C. 553(b)(B), that to protect the public interests during the ongoing national emergency, there is good cause to dispense with prior public notice and the opportunity to comment on this rule before issuing the rule. For the same reasons, Treasury has determined, consistent with section 553(d)(3) of the Administrative Procedure Act, that there is good cause to make this temporary final rule effective immediately.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

Treasury determined that the interim final rule contains no information collection requirements under the Act.

Statutory authorization for the rule

Treasury promulgated this interim final rule pursuant to sections 1102 and 1109 of the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136.

Executive Order No. 12,866 (Regulatory Planning and Review)

The Office of Management and Budget has determined that the rule is economically significant for the purposes of the Order. However, according to Treasury, it is proceeding under the emergency provision at section 6(a)(3)(D) of the Order based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency.

Executive Order No. 13,132 (Federalism)

According to Treasury, it has determined that this rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various layers of government. Therefore, Treasury determined that this rule has no federalism implications warranting preparation of a federalism assessment.